

ZONING BOARD OF APPEALS
MEETING MINUTES
AUGUST 10, 2010
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Deland Davis Carlyle Sims
Greg Dunn Becky Squires
James Moreno John Stetler

Members Absent: Mike Fatt

Staff Present: Jill Steele, Deputy City Attorney
Christine Hilton, Planning Supervisor
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

NEW BUSINESS:

Appeal #Z-10-10: (187 Lois Drive)

Mr. John Stetler stated for the record this was a petition of Mr. Troy Brandt, 187 Lois Drive; requesting a variance from Chapter 1286.01 to allow an accessory building to be built closer than 60 ft. from the front property line for property located on a corner lot in an "R-1R Single Family Rural Residential District". For property legally described as: DEVON MEADOWS LOT 15, EXC BEG AT PT ON S LI OF SD LOT DIST 40 FROM SE COR THEREOF - N87 DEG 57 MIN 30 SEC W ALG SD S LI DIST OF 40 FT - N 28 DEG 25 MIN 30 SEC W ALG SWLY LI OF SD LOT DIST OF 40 FT - S 58 DEG 11 MIN 30 SEC E 69.44 FT TO POB (Commonly known as 187 Lois Drive) Parcel #2530-05-815-0.

Mr. Glenn Perian read the staff report and findings regarding the variance request: Stating appeal #Z-10-10 is a petition from Tony Brandt seeking a dimensional variance to construct an accessory building 35' from a front property line at 187 Lois Drive. The property is located in an R-1R zone with 60' front yard setback requirement.

The subject lot is located in a residential neighborhood and is roughly the same size as other lots in the neighborhood. The lot is rectangular in shape, the topography is generally flat, and the lot is located on a corner. We believe the building could be located in the rear yard, 60' from the front property line. Staff is recommending denial of appeal #Z-10-10 based on the following findings:

- 1) Staff does not believe that there is an unusual practical difficulty or unnecessary hardship associated with this lot due to the shape, topography, or other conditions attached to the lot. We understand the lot is smaller than required for the R-1R district and located on a corner, however, we think the building could be moved further into the lot and comply with the 60' setback requirement.
- 2) Staff believes that if the Variance is granted by the Board, the location of the building will merely serve as a convenience to the applicant and will not alleviate some demonstrable and unusual hardship so great as to warrant a variance in this case.
- 3) Staff does not believe that there is practical difficulty associated with this request.
- 4) Staff does not think the hardship or practical difficulties are exceptional and peculiar to the subject property.
- 5) Staff does not believe the appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted.

Based on these findings and those articulated in the staff report, we are recommending denial of appeal #Z-10-10.

Mr. Troy Brandt, 187 Lois Drive, was present stating he went through the process and received a building permit and had the footings done etc., then had a financial hardship and was unable to continue; said he was sent to California to work and was not able to finish the construction. He states he does not see a problem with the location and not being in the front; if he were to move it elsewhere he would need to cut down trees for another location. Stated he now has the money to finish the construction of the original structure.

Mr. Greg Dunn asked if his front yard faced the street. Mr. Glenn Perian read the ordinance stating that on a corner lot, the front is any property facing the street, therefore having two fronts.

Mr. Dunn asked regarding Lois Drive being closed off on Beckley Road; and when it was done. Ms. Becky Squires stated Beckley Road access was closed in approximately year 2000 because the neighbors had asked for it to be closed in order to eliminate traffic coming and going from Beckley Road through their neighborhood.

Mr. Dunn asked how long a building permit was good for; it was stated a permit is good for one year and can be given extensions if asked for by the property owner.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE #Z-10-10 FOR A VARIANCE FOR PROPERTY LOCATED AT 187 LOIS DRIVE AS SUBMITTED; SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. James Moreno stated he is in agreement with the staff report and does not see a practical difficulty.

Mr. Greg Dunn stated he does not see any practical difficulty; that the permit needed to be re-issued because it had expired and noted when construction is done it is not uncommon to need to remove trees and finds this not to be unique.

Mr. Carlyle Sims stated he feels there is a problem when the construction was allowed to build at one time and now it is not allowed.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; ALL IN OPPOSED; NONE IN FAVOR BASED ON THE RECOMMENDATIONS AND FINDINGS IN THE STAFF REPORT: MOTION DENIED.

Appeal #Z-11-10: (880 (896) Capital Avenue S.W.)

Mr. John Stetler stated for the record this was a petition of Mr. Timothy J. Pitcher, MetroPCS, 896 Capital Avenue, S.W. on behalf of property owner Mr. Alan Ivany; requesting a variance from Chapter 1296.28(A) to enlarge an existing legal nonconforming sign that is located closer to the right-of-way than allowed by ordinance for property located in an "R-1B Single Family Residential District". Property legally described as: BC TWP SEC 14 POB E & W 1/4 LI 33 FT W OF E 1/4 POST - S 132 FT - W 132 FT - N 264 FT - E 132 FT - S 132 FT TO POB (Commonly known as 880 (896) Capital Avenue, S.W.) Parcel #0064-00-030-0.

Mr. Glenn Perian read staff report and findings regarding the variance request: Stating appeal #Z-11-10 is a petition from Timothy Pitcher seeking approval of a sign variance to add an additional sign panel to the existing nonconforming sign located at 896 Capital Avenue SW. Noted the subject lot is a commercial property located in the general vicinity of Capital Ave SW and E. Columbia Avenue. The commercial property is rectangular in shape and is located in a split-zoning district comprised of C-3, R-3B and R-1B zoning. The sign itself is located in a residential district. The existing sign is approximately 54 square feet in size and the applicant would like to add an additional 24 square foot panel to advertise a new tenant.

Stated base on the application for the sign variance for 896 Capital Avenue SW, Planning staff is recommending denial of appeal #Z-11-10 based on the following findings:

- 1) Staff does not believe that the Applicant has clearly demonstrated practical difficulty in this particular case.
- 2) Staff believes the practical difficulty is self created in this case.
- 3) Staff does not think the hardship or practical difficulties are exceptional and peculiar to the subject property.
- 4) Staff does not think that the furnished documentation meets the standards outlined in the Zoning Code authorizing the Board to grant the requested variance.
- 5) Staff does not believe the alleged hardship or practical difficulties which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.

Based on these findings and those articulated in the staff report, we are recommending denial of this appeal.

Mr. Greg Dunn asked what the total square footage that was allowed for this location. Mr. Perian stated it is a legal non-conforming sign because of being only 9 ft. from the road and the ordinance states you cannot increase a legal non-conforming sign.

Mr. Greg Dunn asked if there were three issues: 1) Too close to the road. 2) Size and 3) Ask to increase a legal non-conforming sign. Said the size would be three times the size that is allowed and is it grandfathered currently in size. Mr. Perian stated, yes.

Mr. Deland Davis asked if when changing a non-conforming sign; would the sign then need to be made conforming and legal.

Mr. Greg Dunn asked if a change could be made to the existing signs in order to add the petitioner's sign and/or if we need to table this variance request until the City Commission approves the revision of the sign ordinance. Mr. Glenn Perian stated this would not work for the applicant; because he is seeking to increase size of sign, not just change a panel..

Ms. Jill Steele stated she believes the revision in the sign ordinance has a stipulation stating for a similar use, a change in the legal non-conforming sign would be allowed. Ms. Chris Hilton stated, yes this would be a similar use and allowed, but the petitioner does not want to reface an existing sign and that it would be up to the petitioner to decide.

Mr. Pitcher came forward to speak and handed-out photos of his proposed sign. Stated he went to pull the permits needed and found out the existing sign is a legal non-conforming sign. Noted that 100 sq. ft. is currently allowed and what he is requesting is to add 24 sq. ft. to the existing sign which would only equal a total of 70 sq. ft. Said when the Battle Creek Township merged with the City of Battle Creek is when a change in the zoning occurred and also thinks the road has been widened. Said he is only one foot from being conforming and they are splitting hairs.

Mr. Pitcher stated the district manager for MetroPCS said if he cannot get a sign he would not be allowed to have his business. Said he wants to use a sign he has so it will not be wasted and thrown out into the garbage. Noted the surrounding residences and business owners do not care and he hopes the City appreciates him asking for the variance in the appropriate way according to the ordinance.

Ms. Becky Squires asked Mr. Pitcher who told him the size of the existing sign met the ordinance. Mr. Pitcher stated that Ms. Hilton told him 100 sq. ft. is allowed. Ms. Hilton explained that they had discussion regarding what Mr. Pitcher wanted and later discovered the property was split into three different zones with two different buildings on the one parcel.

Mr. Pitcher stated there are two buildings on this property and putting his sign where the other building is located would not make any sense; noted the sign is non-conforming because of the location on the property.

Mr. Dunn stated they need to look at each property separately and that the split zoning would not be a basis for granting the appeal.

Mr. Pitcher stated he has a good business for the community and needs to provide for his family.

Mr. Dunn asked if he could move the sign to be on the upper portion of the existing sign. Mr. Perian stated he could if the City Commission approves the sign ordinance revision.

Mr. Carlyle Sims asked what if the sign was moved one-foot away would it be alright. Ms. Hilton stated possibly, but there were other issues with the request, including size. Mr. Perian showed the map that outlines the three different zones on the one parcel.

Mr. Dunn asked how many properties are in the City having several different zones on one parcel. Ms. Hilton stated there are several.

Mr. Pitcher stated he could use the vacant spot on the existing sign because if a tenant were to fill that vacancy they would need that sign space.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. GREG DUNN MADE A MOTION TO APPROVE #Z-11-10 FOR A VARIANCE FOR PROPERTY LOCATED AT 880 (896) CAPITAL AVENUE, S.W. AS SUBMITTED WITH THE CONDITIONS AND FINDINGS NOTED IN THE STAFF REPORT; SUPPORTED BY MR. JAMES MORENO.

Discussion:

Mr. James Moreno stated the Zoning Board of Appeals is bound by rules and regulations to follow and states he agrees with the staff findings.

Mr. Deland Davis stated he thought it was interesting that a company would impose a rule to make it difficult for businesses.

Mr. Greg Dunn stated that a franchise would block it in court and find it is unusual as zoning is split into three different zones with a small R-1B zone area. States he remembers this property as always being commercial use area for years. Noted that the R-1B zone is the most restrictive and the parcel has an irregular shape; he would be in favor because of the conditions he stated.

Mr. Carlyle Sims stated the existing sign has always been there when it was Battle Creek Township. Said he is in favor of businesses for Battle Creek.

Ms. Becky Squires states she is struggling with this petition as it has three different zones and it has always been used as a commercial use and never interfered with residential properties. Said she feels they have a hardship.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; FOUR IN FAVOR (DUNN, SIMS, SQUIRES AND STETLER); TWO OPPOSED (DAVIS AND MORENO): MOTION APPROVED.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE JULY 13, 2010 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. JAMES MORENO. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC:

Mr. Howard Wofford, 176 Lois Drive, came forward to speak regarding his property taxes. Stated he had a swimming pool taken out and the value of his home decreased \$5,450 and had only decreased his annual taxes \$4 dollars. Mr. John Stetler stated he would need to speak to the City Assessor's Office regarding his taxes; that the Zoning Board has no authority regarding property assessments or taxes.

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler stated there seems to be a problem with persons pulling permits and then having to have them redone; asked if the departments can consolidate in looking at them so people are not having to redo them. Ms. Hilton stated since October, 2009 the Planning Department has been reviewing the building permits to ensure the zoning issues are addressed correctly.

Mr. John Stetler asked for an update regarding the Accessory Building Ordinance. Ms. Hilton stated it is to be reviewed tonight by the City Commission and hopefully be adopted next Tuesday, August 17, 2010.

Mr. Stetler stated the revisions to the ordinance for Accessory Buildings did not come out as he had hoped and that he plans to bring it back for review in 5-years. He asked Ms. Hilton if the Airport Sound Study had been dropped. Ms. Hilton stated the City will need to update our ordinance with the Federal Regulations.

Mr. Greg Dunn stated regarding the Ordinances for Signs and Accessory Buildings; noted they had been problems in the past and with the new revisions hopefully they will be addressed. Mr. Dunn noted that persons need to attend the City Commission meeting so they will understand what they can and cannot do with their property.

ADJOURNMENT: Mr. John Stetler moved for the meeting to be adjourned; all in favor, meeting was adjourned at 4:58 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department